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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/668,646	09/23/2003	Dale Andersen	D25.2H-11301-US01	2035
490	7590	05/16/2006	EXAMINER	
VIDAS, ARRETT & STEINKRAUS, P.A. 6109 BLUE CIRCLE DRIVE SUITE 2000 MINNETONKA, MN 55343-9185			JOHNSON, JERROLD D	
			ART UNIT	PAPER NUMBER
			3728	

DATE MAILED: 05/16/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/668,646

Applicant(s)

ANDERSEN ET AL.

Examiner

Jerrold Johnson

Art Unit

3728

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 April 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-38 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-38 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Allowable Subject Matter

Claims 24 and 25 were previously indicated as being allowed. The Examiner stated in the prior office action "the prior art of record includes no teachings setting forth the adhesive set forth in these claims. Clearly, there is no intention in Roth to adhesively secure the adjacent support members."

This statement was erroneous. During the "second pair of eyes" review given to allowed applications, the Examiner's supervisor, Mickey Yu, indicated that the concept upon which patentability was established (adhesive used to secure adjacent packages within the unitized package) was known. A search of this concept has revealed the following patent, Villemure US 5,647,191. Villemure discloses a temporary adhesive on adjacent packages unitized into a larger package through the use of a film.

The Examiner apologizes for the inconvenience resulting from the erroneous belief at the basis of the indication of allowability.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-25 and 33-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Roth US 4,119,202 in view of Anderson et al. US 5,887,717 and further in view of Villemure US 5,647,191.

Re claim 1, Roth discloses 3 support members 14,16, and 18 each having the claimed structure, as well as a plurality (2) containers disposed on the support surface of each support member, and a film which secures the 3 support members and their respective containers into a unitary package structure.

Although Roth specifically discloses three support members instead of the claimed two, which through the use of the film have been secured into a unitary package. Implicit in his disclosure is that a plurality of support members can be secured into a unitary package through the use of the film. Accordingly, one of ordinary skill in the art would recognize the benefits of securing two support members and their respective containers within a film.

Roth does not disclose a top pad.

Anderson discloses a single support member supporting a plurality of containers, a film that secures the support member and the plurality of containers into a unitary

Art Unit: 3728

package structure, and a top pad that is disposed under a film. The top pad is of a size where the pad surface is less than the total support area. And, the top pad extends over at least a portion of each of the containers.

Accordingly, it would have been obvious to one of ordinary skill in the art to use a top pad to create a single unitary top surface for the unitary package structure of Roth, thus making a stack of a plurality of unitary package structures of Roth more stable.

Roth also does not disclose the use of an adhesive for holding the sides of the support members.

Villemure shows this exact concept. Note the adhesive 43 in Fig. 4, and col. 4, lines 38-63 which describes in detail the stability benefits of holding adjacent packages together through the use of an adhesive until it is desired to separate them.

Accordingly, it would have been obvious to one of ordinary skill in the art to use an adhesive in this manner to add stability to the adjacent support members of Roth, thus simplifying the process of stocking/merchandizing the product of Roth.

Re claims 2 and 3, Roth discloses this structure with a rounded corner.

Re claim 4, a linear taper represents an aesthetic choice of design over the rounded corner of Roth. There is no functional difference between the two shapes.

Re claims 5-9, Roth discloses the claimed support member structure set forth in claim 1, and shows support members disposed in a side by side arrangement in his unitary package. With respect to the left, right, front and back orientations set forth in claims 5-9, it is noted that no particular structure is set forth in these claims, only orientations (left, right, front and back) are set forth. Additionally, there is also no frame

Art Unit: 3728

of reference for the orientations left, right, front and back. Accordingly, depending on where one is viewing each individual support member would determine the orientation of that support member. And, because no singular frame of reference is set forth, one of ordinary skill in the art would not be precluded from viewing one support member from one frame of reference and the adjacent support member from another frame of reference. Because of resulting breadth of these claims, it can be said that Roth discloses the claimed positional relationships of the support members.

Re claims 10-23, in these claims a singular frame of reference is used in the interpretation of Roth such that the right side of the first support member 14 includes a right wall 38 which is adjacent the left wall 36 which is disposed on the left side of the second support member 16.

Each of the claimed limitations of claims 10-23 are set forth in Roth.

Re claims 33-37, this film structure is disclosed by Anderson and/or Roth. Translucent, transparent and opaque films are also generally recognized in this art as equivalent.

Re claim 38, Anderson discloses this pad size.

Claims 26-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Roth US 4,119,202 in view of Anderson et al. US 5,887,717 and Villemure US 5,647,191, as applied above, and further in view of Copping US 3,118,537 and/or Copping US 3,302,784.

Copping in his two patents discloses a top pad disposed beneath a film in a unitary package structure. The pad includes two pad walls opposite each other, which are tapered at the opposing ends of each pad wall but are otherwise substantially uniform and continuous as is broadly set forth in the claims.

With respect to the left, right, front and back orientations set forth in the claims, it is noted that no particular structure is set forth in these claims, only orientations (left, right, front and back) are set forth. Additionally, there is also no frame of reference for the orientations left, right, front and back. Accordingly, depending on where one is viewing each individual support member would determine the orientation of that support member. And, because no singular frame of reference is set forth, one of ordinary skill in the art would not be precluded from viewing one support member from one frame of reference and the adjacent support member from another frame of reference. Because of resulting breadth of these claims, it can be said that Copping discloses the claimed positional relationships of the pad walls.

The pad walls allow the pad to be slightly interlocked with the product containers that are covered with the pad, and also facilitate pad placement with respect the product containers.

Accordingly, one of ordinary skill in the art would be inclined to add pad walls to the top pad of Anderson so as to attain the benefits set forth above.

With respect to claim 32, Copping does not expressly set forth indicia on the pad walls. Copping 3,302,784 does disclose indicia on a portion of his pad top.

Additionally, it is well known in packaging to use all existing surfaces for the placement

Art Unit: 3728

of product identification indicia. Accordingly, one of ordinary skill in the art would place indicia on the pad wall portions so as to use this visible space to assist in the marketing and merchandizing of that product.

Conclusion

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jerrold Johnson whose telephone number is 571-272-7141. The examiner can normally be reached on 9:30 to 6:00 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on 571-272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3728

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JDJ 


Mickey Yu
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Group 3700